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13 THE HONORABLE THOMAS S. ZILLY  
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24 UNITED STATES DISTRICT COURT  
25 WESTERN DISTRICT OF WASHINGTON  
26 AT SEATTLE  
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33 STALWART CAPITAL, LLC, a New  
34 Jersey limited liability company,  
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37 Plaintiff,

38 v.  
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40 ICAP PACIFIC NORTHWEST  
41 OPPORTUNITY AND INCOME FUND,  
42 LLC, a Delaware limited liability  
43 company; and ICAPEQUITY REAL  
44 ESTATE FUND I, LLC, an inactive  
45 Washington limited liability company,  
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48 Defendants.  
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51 No. C14-01128 TSZ  
52  
53 [PROPOSED]  
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55 **STIPULATED PROTECTIVE ORDER**  
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59 NOTE FOR MOTION CALENDAR:  
60 November 25, 2014  
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64 **STIPULATION**  
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66 **1. PURPOSES AND LIMITATIONS**

67 Discovery in this action is likely to involve production of confidential, proprietary, or  
68 private information for which special protection may be warranted. Accordingly, the parties  
69 hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The  
70 parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket  
71 protection on all disclosures or responses to discovery, the protection it affords from public  
72 disclosure and use extends only to the limited information or items that are entitled to  
73 confidential treatment under the applicable legal principles, and it does not presumptively entitle  
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75 STIPULATED PROTECTIVE ORDER (NO. C14-  
76 00128 TSZ) – 1

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1 parties to file confidential information under seal. The parties to this action (the "Parties")  
2 stipulate that the following Protective Order apply to documents and information produced or  
3 disclosed in this case:

4 **2. "CONFIDENTIAL" MATERIAL**

5 "Confidential" material may include the following types of documents and tangible  
6 things produced or otherwise exchanged:

7 (a) Defendants' list of outside investors and financial and personal details of outside  
8 investors;

9 (b) Defendants' lists of broker/dealers and their lists of investors and potential  
10 investors;

11 (c) Defendants' trade secrets concerning business and investment strategy, which are  
12 contained in the following types of documents that Defendants anticipate needing  
13 to produce, such as, but not limited to:

14     a. Confidential private placement memoranda (and drafts of same);  
15     b. Executive summaries;  
16     c. Tri-fold documents; and  
17     d. Pitch decks or other presentation materials that contain information on  
18         Defendants' business and investment strategy.

19 (d) Defendants' confidential financial reports, financial projections, financial  
20 statements, account statements, and similar accounting materials not shared  
21 outside of Defendants' executives and company, except as may be shared with  
22 select individuals on a confidential basis; and

23 (e) Defendants' prior or current performance data, whether financial or otherwise.

1           **3. SCOPE**

2           The protections conferred by this agreement cover not only confidential material (as  
 3           defined above), but also (1) any information copied or extracted from confidential material;  
 4           (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any  
 5           testimony, conversations, or presentations by parties or their counsel that might reveal  
 6           confidential material. However, the protections conferred by this agreement do not cover  
 7           information that is in the public domain or becomes part of the public domain through trial or  
 8           otherwise.

9           **4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

10          **4.1 Basic Principles.** A receiving party may use confidential material that is  
 11           disclosed or produced by another party or by a non-party in connection with this case only for  
 12           prosecuting, defending, or attempting to settle this litigation. Confidential material may be  
 13           disclosed only to the categories of persons and under the conditions described in this agreement.  
 14           Confidential material must be stored and maintained by a receiving party at a location and in a  
 15           secure manner that ensures that access is limited to the persons authorized under this agreement.

16          **4.2 Disclosure of "CONFIDENTIAL" Information or Items.** Unless otherwise  
 17           ordered by the court or permitted in writing by the designating party, a receiving party may  
 18           disclose any confidential material only to:

19           (a) the receiving party's counsel of record in this action, as well as employees of  
 20           counsel to whom it is reasonably necessary to disclose the information for this litigation;

21           (b) the officers, directors, and employees (including in-house counsel) of the  
 22           receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties  
 23           agree that a particular document or material produced is for Attorney's Eyes Only and is so  
 24           designated;

25           (c) experts and consultants to whom disclosure is reasonably necessary for this  
 26           litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

27           **STIPULATED PROTECTIVE ORDER (NO. C14-**  
 28           **00128 TSZ) – 3**

(d) the Court, court personnel, and court reporters and their staff;

(e) copy or imaging services retained by counsel to assist in the duplication of confidential material, provided that counsel for the party retaining the copy or imaging service instructs the service not to disclose any confidential material to third parties and to immediately return all originals and copies of any confidential material;

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the designating party or ordered by the Court. Pages of transcribed deposition testimony or exhibits to depositions that reveal confidential material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this agreement;

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

**4.3 Filing Confidential Material.** Before filing confidential material or discussing or referencing such material in court filings, the filing party shall confer with the designating party to determine whether the designating party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the Court to file material under seal.

## **5. DESIGNATING PROTECTED MATERIAL**

**5.1 Exercise of Restraint and Care in Designating Material for Protection.** Each party or non-party that designates information or items for protection under this agreement must take care to limit any such designation to specific material that qualifies under the appropriate standards. The designating party must designate for protection only those parts of material,

1 documents, items, or oral or written communications that qualify, so that other portions of the  
 2 material, documents, items, or communications for which protection is not warranted are not  
 3 swept unjustifiably within the ambit of this agreement.  
 4

5 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
 6 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to  
 7 unnecessarily encumber or delay the case development process or to impose unnecessary  
 8 expenses and burdens on other parties) expose the designating party to sanctions.  
 9

10 If it comes to a designating party's attention that information or items that it designated  
 11 for protection do not qualify for protection, the designating party must promptly notify all other  
 12 parties that it is withdrawing the mistaken designation.  
 13

14       **5.2 Manner and Timing of Designations.** Except as otherwise provided in this  
 15 agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or  
 16 ordered, disclosure or discovery material that qualifies for protection under this agreement must  
 17 be clearly so designated before or when the material is disclosed or produced.  
 18

19           (a)     Information in documentary form (e.g., paper or electronic documents and  
 20 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial  
 21 proceedings): The designating party must affix the word "CONFIDENTIAL" to each page that  
 22 contains confidential material. If only a portion or portions of the material on a page qualifies  
 23 for protection, the producing party also must clearly identify the protected portion(s) (e.g., by  
 24 making appropriate markings in the margins).  
 25

26           (b)     Testimony given in deposition or in other pretrial or trial proceedings: The  
 27 parties must identify on the record, during the deposition, hearing, or other proceeding, all  
 28 protected testimony, without prejudice to their right to so designate other testimony after  
 29 reviewing the transcript. Any party or non-party may, within fifteen days after receiving a  
 30 deposition transcript, designate portions of the transcript, or exhibits thereto, as confidential.  
 31

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 33       **00128 TSZ) – 5**

34       78404-0007/LEGAL124326541.1

35       **Perkins Coie LLP**  
 36       1201 Third Avenue, Suite 4900  
 37       Seattle, WA 98101-3099  
 38       Phone: 206.359.8000  
 39       Fax: 206.359.9000

1  
2       (c)     Other tangible items: The producing party must affix in a prominent place on the  
3 exterior of the container or containers in which the information or item is stored the word  
4 "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection,  
5 the producing party, to the extent practicable, shall identify the protected portion(s).

6       **5.3 Inadvertent Failures to Designate.** If timely corrected, an inadvertent failure to  
7 designate qualified information or items does not, standing alone, waive the designating party's  
8 right to secure protection under this agreement for such material. Upon timely correction of a  
9 designation, the receiving party must make reasonable efforts to ensure that the material is  
10 treated in accordance with the provisions of this agreement.

11       **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

12       **6.1 Timing of Challenges.** Any party or non-party may challenge a designation of  
13 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality  
14 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
15 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
16 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
17 original designation is disclosed.

18       **6.2 Meet and Confer.** The parties must make every attempt to resolve any dispute  
19 regarding confidential designations without Court involvement. Any motion regarding  
20 confidential designations or for a protective order must include a certification, in the motion or in  
21 a declaration or affidavit, that the movant has engaged in a good faith meet and confer  
22 conference with other affected parties in an effort to resolve the dispute without Court action.  
23 The certification must list the date, manner, and participants to the conference. A good faith  
24 effort to confer requires a face-to-face meeting or a telephone conference.

25       **6.3 Judicial Intervention.** If the parties cannot resolve a challenge without Court  
26 intervention, the designating party may file and serve a motion to retain confidentiality under  
27  
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1 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
 2 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those  
 3 made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on  
 4 other parties) may expose the challenging party to sanctions. All parties shall continue to  
 5 maintain the material in question as confidential until the Court rules on the challenge.  
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11       **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**  
 12       **OTHER LITIGATION**

13       If a party is served with a subpoena or a court order issued in other litigation that compels  
 14 disclosure of any information or items designated in this action as "CONFIDENTIAL," that  
 15 party must:

16           (a) promptly notify the designating party in writing and include a copy of the  
 17 subpoena or court order;

18           (b) promptly notify in writing the party who caused the subpoena or order to issue in  
 19 the other litigation that some or all of the material covered by the subpoena or order is subject to  
 20 this agreement. Such notification shall include a copy of this agreement; and

21           (c) cooperate with respect to all reasonable procedures sought to be pursued by the  
 22 designating party whose confidential material may be affected.

23       **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

24       If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential  
 25 material to any person or in any circumstance not authorized under this agreement, the receiving  
 26 party must immediately (a) notify in writing the designating party of the unauthorized  
 27 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,  
 28 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of  
 29 this agreement, and (d) request that such person or persons execute the "Acknowledgment and  
 30 Agreement to Be Bound" that is attached hereto as Exhibit A.

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1           **9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
2           **PROTECTED MATERIAL**

3           When a producing party gives notice to receiving parties that certain inadvertently  
4           produced material is subject to a claim of privilege or other protection, the obligations of the  
5           receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
6           provision is not intended to modify whatever procedure may be established in an e-discovery  
7           order or agreement that provides for production without prior privilege review. Parties shall  
8           confer on an appropriate non-waiver order under Fed. R. Evid. 502.

9           **10. NON TERMINATION AND RETURN OF DOCUMENTS**

10          Within 60 days after the termination of this action, including all appeals, each receiving  
11         party must return all confidential material to the producing party, including all copies, extracts  
12         and summaries thereof. Alternatively, the parties may agree upon appropriate methods of  
13         destruction.

14          Notwithstanding this provision, counsel are entitled to retain one archival copy of all  
15         documents filed with the court, trial, deposition, and hearing transcripts, correspondence,  
16         deposition and trial exhibits, expert reports, attorney work product, and consultant and expert  
17         work product, even if such materials contain confidential material.

18          The confidentiality obligations imposed by this agreement shall remain in effect until a  
19         designating party agrees otherwise in writing or a court orders otherwise.

20          IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

21          STIPULATED PROTECTIVE ORDER (NO. C14-  
22           00128 TSZ) – 8

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1  
2 DATED this 25th day of November, 2014.  
3  
4

5 s/James Williams

6 James F. Williams, WSBA No. 23613  
7 JWilliams@perkinscoie.com  
8 Ulrike B. Connelly, WSBA No. 42478  
9 UConnelly@perkinscoie.com  
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15 Attorneys for Defendants  
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19

20 s/ Matt Adamson

21 Matt Adamson, WSBA 31731  
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22 Jameson Babbitt Stites & Lombard, PLLP  
23 801 Second Ave. Suite 1000  
24 Seattle, WA 98104  
T: 206.292.1994  
F: 206.292.1995

25 Attorney for Plaintiff  
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31 **ORDER**

32 PURSUANT TO STIPULATION, IT IS SO ORDERED.  
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DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

The Honorable Thomas S. Zilly

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2 EXHIBIT A  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

THE HONORABLE THOMAS S. ZILLY

19 v STALWART CAPITAL, LLC, a New  
20 Jersey limited liability company,

21 Plaintiff,

22 v.

23  
24 ICAP PACIFIC NORTHWEST  
25 OPPORTUNITY AND INCOME FUND,  
26 LLC, a Delaware limited liability  
27 company; and ICAPEQUITY REAL  
28 ESTATE FUND I, LLC, an inactive  
29 Washington limited liability company,

30 Defendants.

31 No. C14-01128 TSZ

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ACKNOWLEDGEMENT AND  
AGREEMENT TO BE BOUND

I, [FULL NAME], of [FULL ADDRESS], declare under penalty of perjury that I have  
read in its entirety and understand the Stipulated Protective Order that was issued by the United  
States District Court for the Western District of Washington on \_\_\_\_\_, 2014, in the case of  
Stalwart Capital, LLC v. iCap Pacific Northwest Opportunity and Income Fund, LLC, et al., ,  
No. C14-01128 TSZ. I agree to comply with and to be bound by all the terms of this Stipulated  
Protective Order and I understand and acknowledge that failure to so comply could expose me to  
sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose

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1 in any manner any information or item that is subject to this Stipulated Protective Order to any  
2 person or entity except in strict compliance with the provisions of this Order.  
3  
4

5 I further agree to submit to the jurisdiction of the United States District Court for the  
6 Western District of Washington for the purpose of enforcing the terms of this Stipulated  
7 Protective Order, even if such enforcement proceedings occur after termination of this action.  
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10 Date: \_\_\_\_\_, 20\_\_\_.  
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13 City and State where sworn and signed: \_\_\_\_\_  
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16 Printed Name: \_\_\_\_\_  
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19 Signature: \_\_\_\_\_  
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